

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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WILLIAM C. SWAN,

Plaintiff,

v.

Case No. 19-cv-1031-pp

JUDY SMITH, JENNIFER VANDE VOORT,  
and WILLIAM WRIGHT, JR.,

Defendants.

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**ORDER DISMISSING CASE WITHOUT PREJUDICE FOR PLAINTIFF'S  
FAILURE TO PURSUE IT**

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The plaintiff filed this lawsuit on July 18, 2019. Dkt. No. 1. At that time, he listed his address as P.O. Box 3310, Oshkosh, Wisconsin—the Oshkosh Correctional Institution. Id. at 5. The court received some motions from the plaintiff in July and August 2019—a motion for leave to use his release account to pay the initial partial filing fee (Dkt. No. 6), a motion to use release account funds to pay for copies (Dkt. No. 8) and a motion for leave to use his release account funds to pay for medical documents (Dkt. No. 9); the court received the last motion on August 14, 2019. On September 25, 2019, the plaintiff contacted the clerk's office and indicated that he no longer was at Oshkosh. He told the clerk's office staff that he was homeless and staying at a motel. He said he would provide an address when he got one, but said that in the meantime, the court should send mail to his state probation officer, Gwen Beighton. That is the last the court has heard from the plaintiff. It has not

received an updated address for him. He has not filed any further motions or communicated with the court in any other way.

On January 22, 2021, the defendants moved for summary judgment. Dkt. No. 27. On January 25, 2021, the court issued an order requiring the plaintiff to respond to the defendants' motion by February 22, 2021. Dkt. No. 33. The court ordered the plaintiff to respond to each of the defendants' proposed findings of fact and each of the legal arguments the defendants had raised in their brief. Id. at 1–2. The court warned the plaintiff that “his failure to respond is sufficient cause for the court to grant the motion.” Id. at 2 (citing Civil Local Rule 7(d) (E.D. Wis.)). The court also explained that the plaintiff's failure to respond to the defendants' motion was sufficient cause under Civil L.R. 41(c) to dismiss the case for the plaintiff's failure to diligently pursue it. Id. The court ordered that if it did not receive the plaintiff's response materials by the end of the day on February 22, 2021, the court would “grant the defendants' motion and dismiss this case.” Id. The court mailed this order to the plaintiff in care of his probation officer, Gwen Beighton, at 220 S. County Road H—Suite Ce, Elkhorn, WI 53121.

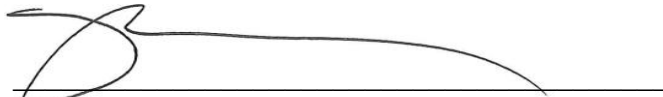
The February 22, 2021 deadline has passed, and the court has not received the plaintiff's response materials. The plaintiff has not requested additional time to respond to the defendants' motion. The court has not heard from the plaintiff since he called the court on September 25, 2019, almost eighteen months ago. Since then, the court has addressed all orders and correspondence to the probation officer; none of that mail has been returned to

the court as undeliverable. It appears that the plaintiff has abandoned the lawsuit. The court will enforce its January 25, 2021 order and will dismiss the case without prejudice. See Civil L.R. 41(c) (“Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.”).

The court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** under Civil L.R. 41(c) because the plaintiff has failed to diligently pursue it. The clerk will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 3rd day of March, 2021.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**